

§ 209.201

adequate deterrent to future violations, the Chief Counsel refers the report to the Department of Justice for criminal prosecution of the offender.

[61 FR 38647, July 25, 1996, as amended at 71 FR 77295, Dec. 26, 2006]

Subpart C—Compliance Orders

§ 209.201 Compliance orders generally.

(a) This subpart prescribes rules of procedure leading to the issuance of compliance orders pursuant to the Federal railroad safety laws at 49 U.S.C. 5121(a) and/or 20111(b).

(b) The FRA may commence a proceeding under this subpart when FRA has reason to believe that a person is engaging in conduct or a pattern of conduct that involves one or more violations of the Federal railroad safety laws or any regulation or order issued under those laws for which FRA exercises enforcement authority.

[61 FR 38647, July 25, 1996]

§ 209.203 Notice of investigation.

(a) FRA begins a compliance order proceeding by serving a notice of investigation on the respondent.

(b) The notice of investigation contains:

(1) A statement of the legal authority for the proceeding;

(2) A statement of the factual allegations upon which the remedial action is being sought; and

(3) A statement of the remedial action being sought in the form of a proposed compliance order.

(c) The FRA may amend the notice of investigation at any time prior to the entry of a final compliance order. If an amendment includes any new material allegation of fact or seeks new or additional remedial action, the respondent is given an opportunity to respond.

§ 209.205 Reply.

(a) Within thirty (30) days of service of a notice of investigation, the respondent may file a reply with the FRA. The Chief Counsel may extend the time for filing for good cause shown.

(b) The reply must be in writing, signed by the person filing it, and state with respect to each factual allegation

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whether it is admitted or denied. Even though formally denied, a factual allegation set forth in a notice of investigation is considered to be admitted for purposes of the proceeding unless:

(1) Opposed by the affidavit of an individual having personal knowledge of the subject matter;

(2) Challenged as defective on its face together with a supporting explanation as to why it is believed to be defective; or

(3) Otherwise actively put at issue through the submission of relevant evidence.

(c) The reply must set forth any affirmative defenses and include a statement of the form and nature of proof by which those defenses are to be established.

(d) If it is necessary to respond to an amendment to the notice of investigation, the respondent may amend the reply concerning the substance of matters contained in the amendment to the notice at any time before the issuance of an order under § 209.211.

(e) If the respondent elects not to contest one or more factual allegations, he or she should so state in the reply. An election not to contest a factual allegation is an admission of that allegation solely for the purpose of issuing a compliance order. That election constitutes a waiver of hearing as to that allegation but does not, by itself, constitute a waiver of the right to be heard on other issues. In connection with a statement of election not to contest a factual allegation, the respondent may propose an appropriate order for issuance by the Administrator or propose the negotiation of a consent order.

(f) Failure of the respondent to file a reply within the period provided constitutes a waiver of his or her right to appear and contest the allegation and authorizes the Administrator, without further notice to the respondent, to find the facts to be as alleged in the notice of proposed violation and to issue an appropriate order directing compliance.

§ 209.207 Consent order.

(a) At any time before the issuance of an order under § 209.211, the Chief Counsel and the respondent may execute an